*THE HON'BLE SRI JUSTICE P.S.NARAYANA

+W.P.No.19441 of 2006

% 12-11-2007

Smt.P.Rama Devi @ Chittemma ..
Petitioner

And

$ The Commissioner, Civil Supplies,
Govt. of A.P., Hyd and
Three others ..
Respondents

<GIST:

>HEAD NOTE:

! Counsel for petitioner : Sri D.Madhava Rao

^ Counsel for respondents : G.P. for Civil Supplies

?CASES REFERRED :

1. 1998(2) A.L.D. 73

THE HON'BLE SRI JUSTICE P.S.NARAYANA

W.P.No.19441 of 2006

Date : 12-11-2007

Between :

Smt.P.Rama Devi @ Chittemma .. Petitioner

And

The Commissioner, Civil Supplies,
Govt. of A.P., Hyd and
Three others .. Respondents

THE HON'BLE SRI JUSTICE P.S.NARAYANA

W.P.No.19441 of 2006

ORDER:

1. Heard Sri D.Madhava Rao, the learned Counsel representing the writ petitioner and the learned Government Pleader for Civil Supplies.

2. This Court issued *rule nisi* on 20-9-2006 and granted interim stay of all further proceedings in W.P.M.P.No.24521/2006. Further on 19-10-2006, in W.P.M.P.No.27677/2006 it was observed that it is unfortunate that in spite of there being interim stay of all further proceedings, the respondents are not supplying the food grains for being distributed among the card holders and hence the respondents were directed to supply essential commodities to Fair Price Shop No.6

which is at Nagarkurnool, Mahaboobnagar District during subsistence of the interim orders passed in W.P.M.P.No.24521/2006 dated 20-9-2006.

3. The Writ Petition is filed for a Writ of Mandamus declaring the order of the Joint Collector, Mahaboobnagar District in Case No.CS.1/66/2006 dated 22-7-2006 as null and void and opposed to law and direct the respondents to continue the authorization of the petitioner to run the Fair Price Shop No.6, situate at Nagarkunool, Mahaboobnagar District and to pass such other suitable orders.

4. It is averred by Smt.P.Rama Devi @ Chittemma, the writ petitioner, that she had been authorized to run Fair Price Shop No.6 of Nagarkurnool, Nagarkurnool Mandal, Mahaboobnagar District vide authorization proceedings No.J/4687/1995 dated 12-12-1995 issued by the then Revenue Divisional Officer, Nagarkurnool. By virtue of the said authorization granted in favour of the petitioner, the petitioner as such had been running the Fair Price Shop since then without any complaint of any sort from any quarter. The petitioner had been discharging her duty as instructed from time to time by the Civil Supplies department and the revenue authorities. There had been no complaint or grievance from any quarter and the commodities are being

distributed to the Ration Card holders from time to time since 1995 till date. For the last more than ten years, the Officers had no occasion to question the conduct of the petitioner at any point of time as they had not received any complaint from any individual. It is further stated that the 3rd respondent, based on a communication received from the Mandal Revenue Officer, Nagarkunrool on 27-9-2005 that the petitioner had left the village and is alleged to be running the Fair Price Shop through her brother P.Gopal @ P.Goverdhan, Benami Dealer, served a show cause notice to furnish reply within three days since the conditions of the authorization had been violated by the petitioner. It is also stated that immediately on receipt of the show cause notice, explanation was submitted by the petitioner wherein through her representation she denied the allegation and *inter alia* stated that she had been running the Fair Price Shop for the last 15 years and being a woman, her brother by name Ganesh @ Gopal was assisting her and further she had been on her family way and therefore it is only an assistance that had been rendered by her brother but the accusation that the petitioner is not residing interest village and that there are several complaints received and that the commodities had not been distributed are not true and

the petitioner had not deviated from the established procedure at any time. The Revenue Divisional Officer did not find favour with the explanation of the petitioner and passed an order dated 21-2-2006 whereunder the Revenue Divisional Officer had stated that the explanation was not convincing and had recorded that he had personally enquired into the matter on 19-1-2006 along with the Mandal Revenue Officer in the village and there are allegations against the Fair Price Shop Dealer and for the said reasons the authorization granted in favour of the petitioner was cancelled with immediate effect. Aggrieved by the same, the petitioner approached the Joint Collector in File No.CS 1/66/05 along with an appeal dated 2-2-2006. The Joint Collector had endorsed that having heard the appellant i.e., the petitioner, and having perused the records granted stay of the orders passed by the Revenue Divisional Officer, Nagarkurnool until further orders by an order dated 3-2-2006. Thereafter the petitioner had been continuously operating the Fair Price Shop and distributing the essential commodities in the village. The matter was heard by the learned Joint Collector from the date of filing of the appeal and on 22-7-2006, the matter came up for final hearing. The learned Joint Collector had concurred with the findings of the Mandal Revenue Officer and the Revenue Divisional

Officer and thereby passed the impugned order that the petitioner had not been distributing the P.D.S. commodities properly. It was also further recorded that in the application filed the petitioner had mentioned her name as “D/o. Mallaiah”, but had not mentioned her husband’s name anywhere. It was also further stated that merely based on surmises and conjectures, the learned Joint Collector came to the conclusion that the petitioner failed to prove her averments beyond all reasonable doubts and since there are no cogent reasons to interfere with the orders of the Revenue Divisional Officer, orders had been pronounced on 22-7-2006 whereby the authorization of the petitioner to run the Fair Price Shop was cancelled but the order was not communicated to the petitioner. It is also further stated that it was only in the second week of September 2006 when a communication was issued by the Revenue Divisional Officer in File No.J/1869/2005 dated 29-8-2006 where a notification had been issued by the learned Revenue Divisional Officer calling for fresh applications, holding interviews on 23-9-2006 for appointment of Fair Price Shop Dealers in the Revenue Divisional Officer’s office. Based on such notification, immediately the petitioner went to the Revenue Divisional Officer, procured the order passed on

22-7-2006 and until then the petitioner was not aware of the orders nor was she communicated the orders of the learned Joint Collector which is not proper in law. It is further specifically pleaded that the learned Joint Collector had not properly appreciated the facts and as a matter of fact, the petitioner had shown ample evidence that she had been discharging her duty and there are no complaints at all but the Joint Collector had not taken into account the said aspect. Further, it is stated that the learned Joint Collector committed grave illegality in terminating the petitioner's authorization. The learned Judge had not completely appreciated the facts in proper perspective. There is ample record to testify to the fact that the petitioner is the resident of the village and she is the daughter of Mallaiah and obviously the records would justify the said fact and the school record was not taken into consideration which also testify to the fact that the petitioner is the daughter of Mallaiah. In spite of such a proof produced and in spite of there being no complaints against the petitioner, the authorities sitting at the helm of affairs with an intention to favour some of their interested person, wanted to throw the petitioner out alleging that a benami person is running the shop which is not at all correct. It is further stated that the petitioner even in her representation clearly mentioned that the person assisting

her is no other than her own brother and on account of some medical reasons, she being a lady, could not sit in the shop continuously and on account of the said genuine reasons her own brother-in-law had been assisting her to run the shop and the said fact had not been recorded by the authorities which is not proper in the circumstances. Further, the officials had not shown or recorded any written complaint except merely making a statement that there are complaints. As a matter of fact, there are no complaints at all at any point of time. It is further stated that the petitioner had been running the Fair Price Shop since 1995 without any complaint and at this distant point of time with an intention to favour somebody the Mandal Revenue Officer started making false accusations and giving false reports on account of personal involvement in the issue to favour some of his known persons and with the said intention he started complaining against the petitioner on flimsy grounds and pressurized the Revenue Divisional Officer to see that the petitioner's authorization is cancelled. The authorities, without there being any complaint, wanted to cancel the authorization of the petitioner which is not proper and legal. It is also further stated that the petitioner had lost her lands in the construction of Srisailam project and she is an ouster for

construction of the Srisailam Dam and she had lost valuable lands in the construction of the dam and therefore the then Government was kind enough to allot the Fair Price Shop for her livelihood which the present respondents want to snatch away by which the petitioner would lose her bread and butter and herself and her family members will starve for want of livelihood. The petitioner committed no mistake and there are no complaints against the petitioner at all and the allegations made against the petitioner are invented for the purpose of benefiting somebody. The petitioner is discharging her duty as diligently as possible.

5. The 4th respondent filed counter wherein in para-2, it is averred that it is true that the petitioner was Fair Price Shop dealer of shop No.l6 of Nagarkurnool and she was issued authorization by the Revenue Divisional Officer, Nagarkurnool in proceedings No.J/4687/95 dated 12-12-1995 and she was dealing with business under proper permission and authorization by the Revenue Divisional Officer, Nagarkurnool. It is further stated that subsequently the petitioner got married and consequent upon her marriage she shifted from Nagarkurnool to her husband's place Mahaboobnagar. The Fair Price Shop No.6 of Nagarkurnool which was authorized to the

petitioner is not being unauthorisedly run by a benami dealer since three years and the same is in contravention under the A.P. Public Distribution System (Control) Order 2001 and on detection of the said fact the Mandal Revenue Officer, Nagarkurnool reported on 27-9-2005 the facts to the Revenue Divisional Officer and the Revenue Divisional Officer in turn issued a show cause notice on 20-11-2005 to the petitioner calling her explanation in the matter. After examination of the explanation offered by the petitioner dated 3-12-2005 as well as on the personal enquiry ascertain the fact that the Shop is being dealt by a benami person by name Gopal on behalf of the petitioner the authorization of the petitioner was cancelled by the Revenue Divisional Officer vide orders No.J/1860/2005. Aggrieved by the said orders of the Revenue Divisional Officer, Nagarkurnool, the petitioner approached the appellate authority i.e., the Joint Collector, Mahaboobnagar. The Joint Collector, Mahaboobnagar also tried the case and finally confirmed the orders of the Revenue Divisional Officer while dismissing the appeal through orders dated 22-7-2006 in Case No.CSI/66/2006. Apart from the said fact, the Shop was run by benami dealer who was never issued any authorization and further there were several other complaints that the said benami person committed

irregularities in distribution of the commodities. In view of the same, the authorization of the petitioner was cancelled. It is also further stated that aforesaid, the petitioner, after her marriage, migrated to her in-laws place and is put up there itself along with her husband. The Fair Price Shop business was unauthorisedly handed over to the said Gopal and others which is in violation of the authorization conditions. As such the petitioner was served with a show cause notice and the action taken in the matter is in accordance with the Rules and the contentions of the petitioner contra are without substance and hence denied. It is also further stated that as contended by the petitioner it is not true that she was assisted by her brother Gopal, but it is a fact that the Shop is totally being run by him who is not an authorised person. As such the action of the Revenue Divisional Officer, Nagarkurnool cancelling the authorization is as per law and the same was also confirmed by the Joint Collector in case No.CSI/66/06, dated 22-7-2006. It is also further stated that the contention of the petitioner that the Revenue Divisional Officer passed order without taking into consideration her explanation is not true and correct. The petitioner, in the explanation, simply denied the allegations made in the show cause notice without

showing any evidence in support of denial of the facts and mere denial of facts cannot disprove the allegations and therefore the plea of the petitioner in this regard is unsustainable. Further, it is a fact that the Revenue Divisional Officer, Nagarkurnool cancelled the authorization of the petitioner for the reason that she was not dealing with business where as on her behalf a banemi person was dealing with business in violation of the authorization conditions. Aggrieved by the said orders the petitioner approached the Appellate Authority, the Joint Collector, who also upheld the order of the Revenue Divisional Officer through order dated 22-7-2006 in Case No.CSI/66/06. Further, the petitioner on her marriage shifted to Mahaboobnagar, her in-laws place, and the Fair Price Shop was handed over unauthorisedly to a benami and as such for the said reason the Revenue Divisional Officer cancelled the authorization of the petitioner and the same was confirmed by the Joint Collector in Appeal. The petitioner was aware of the orders made by the Joint Collector dated 22-7-2006 and she herself admitted that she had procured the orders and hence the contentions made contrary are baseless.

6. The order of the Joint Collector, Mahaboobnagar dated 22-7-2006 in Case No.CSI/66/2006, reads as hereunder :

IN THE COURT OF THE JOINT COLLECTOR,
MAHABOOBNAGAR
Case No.CS1/66/2006
PRESENT : Sri D.VARAPRASAD, I.A.S.,
JOINT COLLECTOR, MAHABOOBNAGAR

Between :

Smt.P.Rama Devi
F.P.Shop Dealer,
Shop No.6,
Nagarkurnool proper. .. Appellant

And

Revenue Divisional Officer,
Nagarkurnool. .. Respondent

Sub:- Civil Supplies – Appeals – Nagarkurnool Division – Nagarkurnool Village & Mandal – F.P.Shop No.6 – Appeal against the orders of R.D.O., Nagarkurnool in having cancellation of authorization of F.P.Shop dealer, Shop No.6, Nagarkurnool proper – Final orders passed – Reg.

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ORDER:

This is an appeal filed by Smt.P.Rama Devi, F.P. Shop dealer of Shop No.6 of Nagarkurnool, aggrieved by the order of the Revenue Divisional Officer, Nagarkurnool dated 20-1-2006 in File No.J/1860/2005 wherein her authorization was cancelled.

2. The case came up for final hearing before me on 22-7-2006, perused the material on record. In her appeal memo, she contended that she has not

committed any irregularities and she has been running the shop with the assistance of her husband. But she was unable to substantiate her contention by way of any evidence. As seen from the report of the Mandal Revenue Officer, Nagarkurnool, the appellant was not found residing in the town and the shop was being run by one Sri Gopal, Benami. In the independent enquiry conducted by the Revenue Divisional Officer, Nagarkurnool, he stated that he enquired personally in the village about the functioning of the Fair Price Shop and found several complaints received against the appellant and that she was not distributing the P.D.S. commodities properly. In her petitions before me for exemption of her appearance, she mentioned her name as the daughter of Mallaiah. She has not mentioned her husband's name anywhere in the proceedings, which clearly throws suspicion in her contention. The appellant failed to prove her averments beyond all reasonable doubt, and I see no cogent reason to interfere with the order of the Revenue Divisional Officer and therefore dismiss the appeal.

Pronounced on 22-7-2006

Sd/-
Joint Collector,
Mahaboobnagar

It is needless to say that this order was made on Appeal filed by the writ petitioner before the 3rd respondent as against an order made by the 4th respondent in File

No.J/1860/05 dated 20-1-2006. The order of the 4th respondent dated 20-1-2006 in J/1860/05, reads as hereunder :

Government of Andhra Pradesh

Revenue Divisional Office, Nagarkurnool

No.J/1860/2005 Dt.20-01-06

Proceedings

Present : Sri Md.Raheemuddin, B.Com.,
Revenue Divisional Officer,
Nagarkurnool.

Sub:- C.S. – Nagarkurnool Mandal – Nagarkurnool Village – Complaint against Smt.P.Rama Devi, F.P.S. dealer No.6 – Authorization cancelled – Orders issued – Reg.

Ref: 1. Collector, Mahaboobnagar No.A5/4585/2000, dated
13-4-2005
2. M.R.O., Nagarkurnool Lr.No.C/5705/04, dt.27-9-2005
3. R.D.O., Nagarkurnool S.C. Notice No.J/1860/05,
Dt.20-11-2005
4. Explanation of F.P.S. dealer dated 3-12-2005.

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ORDER:

In response to the orders received from the District Collector, Mahaboobnagar through the reference 1st cited, the matter has been got enquired by the Mandal Revenue Officer,

Nagarkurnool and reported that Smt.P.Rama Devi, F.P.S. Dealer No.6 of Nagarkurnool village is left the village after her marriage and the F.P.S. is not being run by her and being run by Sri Gopal, "Benami", F.P.S. dealer since last (3) years. Mandal Revenue Officer, Nagarkurnool has proposed to cancel the authorization of the original F.P.S. dealer.

A separate show cause notice has also been served on her through the reference 3rd cited. The explanation submitted by Smt.P.Rama Devi, F.P.S. dealer No.6 is not convincing manner.

I have also enquired personally into the matter on 19-1-2006 along with Mandal Revenue Officer in the village and several complaints received against the said F.P.S. dealer as the E.Cs. are not being distributed properly. Thus the F.P.S. dealer No.6, Nagarkurnool village has deviated the conditions of A.P.S.Control Orders 2001. In view of the above reasons, the authorization issued earlier in favour of Smt.P.Rama Devi, F.P.S. dealer No.6 is hereby cancelled with immediate effect.

The Mandal Revenue Officer, Nagarkurnool is directed to make alternate arrangements for distribution of the E.Cs. in the village till further orders.

Sd/-
Revenue Divisional Officer,
Nagarkurnool

7. In **M.Chandra Obula Reddy Vs. District Collector, Cuddapah** [1], while dealing with A.P.

Schedule Commodities (Regulation of Distribution by Card System) Order 1973 and appointment of dealers, the Government Memo No.188835/0S/11/90-1 F & A(CS.II) dated 22-3-1990 had been referred to and it was held that persons only residing in the village in which the Shop is located and who are having the minimum educational qualifications would be entitled to be considered for appointment and persons having higher or additional qualifications cannot claim the dealership when they do not satisfy the residential qualification.

8. The observation made by the 3rd respondent to the effect that in the independent enquiry conducted by the Revenue Divisional Officer, Nagarkurnool he stated that he had enquired personally in the village about the functioning of the F.P. Shop and found several complaints received against the appellant that she was not distributing the P.D.S. commodities properly, appears to be a vague finding since specific instances had not been referred to at all. Further, yet another reason which had been specified is that in her petitions praying for exemption of her appearance she mentioned her name as daughter of Mallaiah and had not mentioned her husband's name which would create some suspicion. It was also observed that the appellant failed to prove the

averments beyond all reasonable doubt. No doubt, the main ground is that the Fair Price Shop in question is being run by one Sri Gopal, a benami. The petitioner had submitted her explanation and also explained under what circumstances, a close relative of her, had been discharging the functions as a Fair Price Shop Dealer. It is no doubt true that a Fair Price Shop Dealer is expected to run the shop personally and a benamidar cannot run the shop on behalf of the original Fair Price Shop Dealer. However, on a careful analysis of the orders which were made by both the 3rd and the 4th respondents, this Court is thoroughly satisfied that convincing reasons had not been recorded and on certain vague allegations and without considering the material which had been produced the said orders were made. Be that as it may, in the light of the facts and circumstances, since always the availability of alternative remedy cannot be said to be a bar to maintain a Writ Petition and inasmuch as this Court issued *rule nisi* and also granted interim orders as referred to supra, the impugned order and also the order made by the 4th respondent are hereby set aside and the matter is remitted to the 4th respondent to give opportunity to the petitioner to produce further material if any in this regard and let the 4th respondent pass appropriate orders in the

light of such material which may be produced in accordance with Law after recording proper reasons.

9. Accordingly, the Writ Petition is allowed to the extent indicated above. No costs.

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Justice P.S.Narayana

Date : -11-2007

L.R. copy to be marked : YES / No

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[1] **1998(2) ALD 73**